



STATE OF INDIANA

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October 9, 2012

Marisa Kwiatkowski
2080 N. Main Street
Crown Point, Indiana 46307

Re: Formal Complaint 12-FC-266; Alleged Violation of the Access to Public Records Act by the Warren County Coroner

Dear Ms. Kwiatkowski:

This advisory opinion is in response to your formal complaint alleging the Warren County Coroner ("Coroner") violated the Access to Public Records Act ("APRA"), Ind. Code § 5-14-3-1 *et seq.* Our office forwarded a copy of your formal complaint to the Coroner on September 13, 2012, to which a response was due no later than October 8, 2012. As of today date, we have yet to receive a response.

BACKGROUND

In your formal complaint, you allege that you submitted a written request for records via email to the Coroner in June 2012. Upon receiving no response, you submitted a second request, via certified letter, to the Coroner on July 13, 2012. Thereafter, you attempted to contact the Coroner multiple times to follow up regarding your request, but you allege that Coroner has failed to respond in any fashion. Your most recent request occurred via phone on September 5, 2012. As of September 13, 2012, the date you filed your formal complaint with the Public Access Counselor's Office, you further allege that the Coroner has failed to respond in any fashion to your request.

ANALYSIS

The public policy of the APRA states that "(p)roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." *See* I.C. § 5-14-3-1. The Coroner is a public agency for the purposes of the APRA. *See* I.C. § 5-14-3-2. Accordingly, any person has the right to inspect and copy the Coroner's public records during regular business hours unless the records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. *See* I.C. § 5-14-3-3(a).

A request for records may be oral or written. *See* I.C. § 5-14-3-3(a); § 5-14-3-9(c). If the request is delivered in person and the agency does not respond within 24 hours, the request is deemed denied. *See* I.C. § 5-14-3-9(a). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. *See* I.C. § 5-14-3-9(b). The seven-day time period does not commence until the public agency is in receipt of the request for records. Under the APRA, when a request is made in writing and the agency denies the request, the agency must deny the request in writing and include a statement of the specific exemption or exemptions authorizing the withholding of all or part of the record and the name and title or position of the person responsible for the denial. *See* I.C. § 5-14-3-9(c). A response from the public agency could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply.

Without the benefit of a response from the Coroner, to your original request for records or formal complaint, it is unclear to me why your request was denied. Under the APRA, a public agency that withholds a public record bears the burden of proof to show that the record is exempt. *See* I.C. §§ 5-14-3-1, 5-14-3-9(f), (g). Exceptions to disclosure are narrowly construed. *See* I.C. § 5-14-3-1. As the Coroner has not provided a justification for withholding the records at issue here and has clearly failed to comply with responding to a request pursuant to the requirements of section 9, it is my opinion that the Coroner has violated the APRA.

CONCLUSION

For the foregoing reasons, it is my opinion that the Coroner violated the APRA.

Best regards,

A handwritten signature in black ink, appearing to read "J. Hoage". The signature is written in a cursive, somewhat stylized font.

Joseph B. Hoage
Public Access Counselor

cc: Warren County Coroner